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SUBJECT: 2008 SPECIAL 301 REVIEW - GREECE

REF: A. FROWICK-COWAN EMAIL 12/20/07
[1](#)B. ATHENS 2393 (2007)

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Summary

[1](#)1. (SBU) IPR developments in Greece in 2007 paint a very complex picture. On the one hand, cooperation between the GOG and industry remained strong, and the GOG continued to say all the right things regarding IPR issues and appeared to want to do the right thing. Most impressively, positive IPR forces within the government (particularly OPI and YPEE) continued to make steady progress in laying the groundwork necessary to begin transforming public opinion on IPR issues - the key to achieving substantive improvement in Greece's IPR regime. Working towards this goal, the GOG developed and executed an impressive education and outreach plan that included programs for elementary and high school students, training seminars for police and customs officers, and public awareness campaigns aimed at the wider public, journalists, musicians, the legal community, and small and medium enterprises. These actions, while reaping little immediate impact, will ultimately be the most useful in sensitizing the public to IPR issues and in dealing a blow to IPR violations in Greece.

[1](#)2. (SBU) Summary continued. On the other hand, the GOG's efforts on the important goal of enforcement complicated the picture. While the government's actions reflect some positive developments which have laid the groundwork for long-term gains in the enforcement area, they also expose further challenges, particularly in the short term. Positive developments that have laid the groundwork for future gains include:

- Passage of two IPR regulations, one on administrative fines and another on seizures and confiscations;
- A Christmas season raid/seizure campaign; and
- Three waves of software audit letters to private companies.

Continued challenges in the near term include:

- Limited enforcement of the two new IPR regulations (regarding administrative fines and seizures);

-- Too few prosecutions and convictions and non-application of deterrent penalties;
-- Limited coordination by GOG IPR forces; and
-- No formalization of two task forces or an inter-ministerial committee to help coordinate IPR actions. End Summary.

The Long-term: Progress on the 2007 Action Plan

13. (SBU) As part of the 2007 Special 301 process, an Action Plan that was later included in the "Special 301 Initiative" was prescribed by USG interagency participants for Greece. The GOG's progress on this plan reflects steps taken towards achieving the long-term goal of winning the battle against IPR violations. The following developments have laid the groundwork for further gains:

-- Education/Outreach: The star of the GOG's IPR efforts, the Hellenic Copyright Office (OPI), continued to engage in a wide variety of outreach and educational activities in 2007 and has shared a comprehensive list of its activities with us (see ref a). Highlights include educational programs in elementary school and high school; seminars for the training of police officers and customs officers; the preparation of copyright manuals for police and customs officers; a public awareness campaign launched during the summer in order to deter the public from buying counterfeited and pirated CDs and DVDs; preparation of a website dedicated to IPR issues; and several coordinating meetings with various GOG ministries to further actions in the IPR area and to improve enforcement. OPI, working with the U.S. Embassy and the U.S. Patent and Trade Office (USPTO) has scheduled a 26-27 June IPR conference to help educate government officials and others on various IPR issues, including stakeholder rights. OPI is also considering a suggestion by the USPTO and the Embassy to

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host a roundtable on IPR issues for judges. Efforts like this will ultimately prove the most useful in the long run in changing Greek attitudes towards IPR issues.

-- 2007 Copyright Law Amendment: Law 3524 amended the Copyright Law to give copyright infringers the option of paying an administrative fine in lieu of criminal prosecution. The amendment provides that street vendors caught in possession of up to 500 music CDs and up to 50 software CDs shall be given the opportunity to pay an administrative fine of 20 euros for each music CD and 1,000 euros for each software CD, but the total administrative fine shall not be less than 1,000 euros. If vendors opt instead to go to Court, the expectation is that judges will impose harsher sentences, seeing that defendants had passed on the opportunity to merely pay a fine. The Ministries of Finance and Culture issued implementing procedures for imposing the administrative fines in September. Over time, enforcement of this regulation should help decrease piracy in Greece. Industry has been supportive of the amendment, hoping it will increase the costs of pirating.

-- Ministerial Decree No. K1-1178: This decree was signed on June 25, 2007. It was intended to help remove street vendors from the streets by empowering the municipal police, the tax police (YPEE) and the national police to confiscate and destroy publicly all items protected under the current IPR legislation when sold in the streets by street vendors. Just as with the administrative fines regulation above, the Embassy and industry have hoped enforcement of this decree would help to decrease the incidence of piracy in Greece.

-- Christmas Season Raid/Seizure Campaign: According to the head of the special tax police (YPEE), Spyros Kladas, the GOG launched a program to sweep Athens's streets of

contraband. Twenty seven-person teams consisting of YPEE, national police and Athens municipal police hit the streets each day between December 19 and January 15, targeting those areas where the problem was most acute. Industry representatives, however, reported that the raids and seizures were not as effective as had been hoped. According to industry reps, the campaign did not specifically crack down on CDs or DVDs, but rather on luxury goods (i.e. handbags, etc.). Over time, more raids like these will help to bring down piracy violations.

-- Software Audit Letters: In one of the brightest spots in Greece's IPR scene, YPEE has sent out three waves of letters to private businesses requesting information on business software usage and requesting copies of software licenses: the first wave was sent to companies with 50 or more employees in 2006; the second wave of 1,060 letters was sent to companies with 40-49 employees in 2007; and a third wave of 2,303 letters were sent to companies with 25-39 employees in 2007. BSA credits these letters and publication of these letters on YPEE's website with helping to lead to a reduction in the business software's piracy rate from 61 percent in 2006 to 59 percent in 2007. YPEE had also promised to begin following up on these letters with audits or interviews (in addition to the 40 interviews conducted last year). YPEE was to have conducted approximately 260 audits between the January-April 2008 timeframe; however, to date, none of these audits have taken place. These audits are imperative to help enforce the anti-piracy intent of the letters. BSA is still optimistic that YPEE will be able to conduct 50 audits by April, and that these audits (and publication of these raids) will lead to another decrease in the rate of business software piracy in 2008 and in the future.

-- Speaking to the high level of cooperation between the GOG and industry, BSA organized a seminar at YPEE premises in order to train YPEE auditors on how to track illegal software and update their knowledge in software cases. BSA has also offered up BSA staff for use in YPEE business software audits/raids. Over time, cooperation on efforts like this should help to contain software piracy.

-- Internet Piracy: At the request of industry, OPI has started a process by which a Memorandum of Understanding may be reached between rights holders and ISPs regarding intellectual property issues and the Internet.

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Short-Term Obstacles and Challenges: IPR Enforcement on the Street and in the Courts

14. (SBU) Despite these positive developments and active cooperation by OPI and YPEE with the industry and the Embassy, the GOG as a whole currently does not adequately or effectively enforce IPR legislation. Enforcement on the street of the two new regulations (one implementing administrative fines and the other mandating confiscations and seizures) and successful prosecutions (with the application of deterrent penalties) by the courts remain the weakest links in the short term to winning the IPR battle.

15. (SBU) Street Enforcement of the two new IPR regulations remains limited for reasons specified below:

-- Administrative Fine Regulation: Tax police and the national police claim the new regulation is too complex to implement absent issuance of explanatory circulars. The industry disagrees with the police assertion, claiming it is an excuse for inaction. Whatever the truth, the result is limited enforcement of this important piece of IPR legislation. On the limited occasions the regulation is

enforced, enforcement is complicated by a structural deficiency: because it does not cover contraband DVDs (at the insistence of the industry), any vendor caught selling DVDs must face a judge. If vendors carry only CDs, they are given a choice to pay a fine or go to court (where the industry expects judicial sentences will be truly punitive since judges will be apprised of the defendant's waiver of the option to pay a fine). If, however, a vendor carries any DVDs, no choice is given, and judges do not factor in their sentencing decisions a waived fine. Since the public perception is that the Greek court system is extremely backed up and that judges do not accord a high priority to IPR cases, vendors reportedly choose to take their chances in court rather than pay a fine. According to the industry and the police, most vendors now ensure they are carrying DVDs in the hopes of lessening any eventual sentence.

-- Ministerial Decree on Street Vendors: Industry representatives claim the police can begin enforcing this decree without further bureaucratic processing, but enforcement does not occur. Due to limitations of the municipal police (they do not carry weapons and do not have the authority to make arrests) and the fact that confrontations with street vendors can turn violent, practical enforcement of this regulation requires coordination between municipal authorities and the two national government law enforcement branches - the tax police and the national police. The municipal police have requested armed police assistance, but thus far, joint raids only occur under limited circumstances (i.e. the Christmas raids referenced above). The decree also calls for public destruction of the confiscated contraband, but due to bureaucratic infighting and inertia, the inter-ministerial committee that must be created to implement destruction procedures has not been created.

-- Cooperation between the different branches of the police and the ministries under which they belong is crucial to effective enforcement of the two new regulations above, as well as other IPR legislation. The Embassy and Consul General have tried bringing together OPI, YPEE, the national and municipal police, and the industry to improve coordination and cooperation and to iron out a formal agreement. The deputy mayor of Athens told the Embassy in September (see reftel b) that he was attempting to revive an MOU on cooperation that had been agreed between the municipal police in Athens and the national police during the Olympics. This, however, has not yet occurred. Coordinated actions by different branches of the police continue to be focused around campaigns such as that launched during the Christmas season.

16. (SBU) Enforcement in the Courts: Prosecution of IPR cases remains problematic. Prosecutors are often overworked, and the court system itself is over-burdened, as publicly acknowledged by the Minister of Justice

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himself. With requests for postponements, appeals and other motions, it can be 2 to 3 years before a criminal IPR case (with the exception of the special IPR courts in Athens and Thessaloniki, most Greek IPR cases are prosecuted in criminal courts) is finally heard and judgment rendered. Even when a judgment is finally granted, judges frequently appear to view IPR violations as "nuisance crimes," and use the tremendous discretion granted to them under the law to provide for minimal fines and suspended jail sentences. According to EPOE (the Greek branch of the MPAA), of 250 criminal IPR convictions from 2005-2007, only three resulted in any time served. On a positive note, the industry informs us that some courts, particularly those in Athens, Piraeus and Thessaloniki, are no longer suspending fines. While training and educational efforts by OPI are helpful, more needs to be done to sensitize the judiciary to IPR issues and to ensure enforcement of IPR legislation in the courts through

application of deterrent penalties. Given the historical factors that guarantee the Greek judiciary independence, this effort will be a lengthy process.

Short-term Obstacles and Challenges: Government Cooperation
-- Task Forces and an Inter-Ministerial Committee

¶7. (SBU) Established under OPI in 2006, the Athens Task Force has been working for over one year. The group includes representatives from the various Greek Departments and Ministries engaged in some aspect of IPR, as well as industry reps. While the Task Force met several times in 2007, because it meets on an ad hoc basis, does not have a dedicated staff and does not have a leader empowered with tasking people/agencies and accountable to leaders for delivering results, its meetings seldom result in concrete actions that lead to measurable improvements in the IPR situation. At a recent informal task force meeting convened in Thessaloniki by a prosecutor, local representatives of the Hellenic police, municipal police, YPEE and other law enforcement agencies made clear they considered IPR enforcement not only a low priority, but too difficult, too time-consuming and politically risky given the lack of public support. The industries believe the Athens Task Force and the dormant Thessaloniki Task Force should be formalized (complete with defined leadership and dedicated staff) as soon as possible. Post agrees, and believes that action in the immediate short-term action on these task forces, particularly if they are formalized at a policy and decision-making level (i.e., secretary general), can help work through some of the longer-term coordination and bureaucratic infighting issues and help to overcome inertia.

¶8. (SBU) MFA IPR Counselor Marina Hondropoulou has told Post several times over the past year that the GOG is discussing the creation of an inter-ministerial committee on IPR issues staffed at the secretary general level. In a meeting on February 28 with the acting economic deputy, Hondropoulou showed a copy of the pending decision to form this committee and indicated the order would be finalized and the committee created by World Intellectual Property Day in April. [Comment: If in fact this committee is formed and begins to meet in the near future, this will represent a major step forward in the GOG's ability to coordinate its efforts and hence gain traction on longer-term IPR issues. End Comment.]

Border Enforcement

¶9. (SBU) While Greece is not known to be a major producer or exporter of counterfeit goods, Greece does have porous borders and inadequate border and customs control. As a result, and as a Schengen member, Greece appears to be a favored port of entry for counterfeit goods to enter the EU. A percentage of these counterfeit goods are sold in the local economy, but the majority is destined for more lucrative markets in Germany and France. The GOG has established an informal working group on customs issues that includes representatives from the Embassy, the Ministry of the Economy and the Hellenic Customs Service. This working group appears to be dormant at this time. In addition, industry informs us that in the past year, no

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significant seizures appear to have been made by the customs authorities.

Use/Procurement of Government Software

¶10. (SBU) The GOG officially requires that all software in use by the official agencies/ministries be properly licensed. According to government officials, the Ministry

of the Interior has actively highlighted these requirements through all levels of government, although Post is not aware of any specific enforcement activities taking place. Allegations continue that government offices turn a blind eye to internal piracy (usually the installation of a single licensed program on multiple machines). There was, however, a promising breakthrough with Microsoft in 2007. Microsoft opened a Center for Innovation in Greece, and also signed an agreement with the government for the legalization of its products used in government ministries. It is not yet clear if this will help to lower incidents of copyright infringement by the government for other software companies, but it bodes well for Microsoft's products.

Internet Piracy: The Preeminent Danger for the Future

¶11. (SBU) Internet piracy is still in its nascent stages in Greece. Peer-to-peer (P2P) piracy has not yet infiltrated the Greek markets. According to the industry reps, there are approximately 3.8 million internet users in Greece, representing about 35 percent of the population. The growth potential is enormous, and industry reps warn that unless an adequate enforcement regime is put in place as soon as possible, the battle of Internet piracy in Greece will be lost before it begins. There is a legislative deficiency involving Internet piracy: Greek legislation prevents ISPs from disclosing information about their subscribers' names or physical addresses in order for rights holders to continue investigations and pursue legal actions against suspected infringers. While, as mentioned above, OPI has convened a meeting between ISPs and right holders to begin to discuss moving forward on an MOU, progress seems slow, no target has been established, and industry doubts whether an MOU will be honored by ISPs absent legislative action. A legislative committee charged with, among other issues, amending the copyright law to allow for the disclosure of this information to rights holders appears to be mired in discussions of a complete (and perhaps unnecessary) overhaul of the copyright law.

Statistics

¶12. (SBU) Reflective of the diffuse organization of IPR enforcement in Greece, there does not appear to be one single source of official, IPR-related statistics. This further complicates Post's assessment of the IPR picture in Greece. While EPOE has provided the Embassy with statistics related to their industry on court appearances, convictions and sentences, and the International Federation of Phonographic Industries (IFPI) local representatives have provided some statistics on their organization's confiscations, the government does not appear to keep one consolidated set of statistics. OPI efforts to develop and maintain a statistical database (see reftel b) continue to languish as a result of limited capacity by the key enforcement entities (i.e. the police, customs) to track and transmit data on a regular basis. While it has the desire, OPI lacks the resources to be able to administer this database over the long term without more resources or substantial cooperation by other parts of the government. For the time being, development of this database has been put on hold.

Comment

¶13. (SBU) Post reiterates that IPR developments in Greece in 2007 paint a very complex picture, with strong GOG actions in the area of public education and awareness and continued challenges in the areas of enforcement and government coordination. The Greek public has a very limited appreciation for or understanding of IPR, does not

generally see the issue as a criminal act, and does not widely support active IPR enforcement. Limited enforcement, including limited application of the two IPR regulations, too few prosecutions and judicial reluctance to apply maximum sentences, is a reflection of Greek society's views on the issue rather than an aberration. In this context, educational efforts are the key to transforming the public's views and to winning the IPR battle in the long run. That said, there is room for more improvement in current enforcement efforts as educational efforts are not likely to improve the IPR situation in Greece in the near term. While the GOG has laid some of the groundwork for future gains in the area of enforcement, further coordinated actions by the GOG are needed in order to achieve progress (including curtailing internet piracy while still in its infancy, containing street piracy through the implementation and enforcement of the two new IPR regulations, and increasing court prosecutions and application of appropriate deterrent penalties).

¶14. (SBU) Comment Continued. Knowing the Special 301 timeline, the Greek MFA today requested an opportunity to brief the Embassy on new GOG IPR-related initiatives. The DCM and the head of the MFA Americas Directorate will meet on Friday, March 7 to discuss these new initiatives. End Comment.

SPECKHARD